

“(3) NO INFERENCE.—Nothing in the amendments made by this section [amending this section and section 521 of this title] shall be construed to infer that a change in law is intended as to whether any patronage earnings may or not be offset by nonpatronage losses, and any determination of such issue shall be made as if such amendments had not been enacted.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years ending after October 31, 1978, see section 316(c) of Pub. L. 95-600, set out as a note under section 46 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to per-unit retain allocations made after Oct. 9, 1969, see section 911(c) of Pub. L. 91-172, set out as a note under section 1382 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89-809, set out as a note under section 1382 of this title.

#### EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

#### PER-UNIT RETAIN CERTIFICATES COVERED BY WRITTEN AGREEMENTS BETWEEN OCT. 14, 1965, AND NOV. 13, 1966: TRANSITION TREATMENT OF BY-LAW PROVISIONS

Section 211(f) of Pub. L. 89-809 provided that a written agreement between a patron and a cooperative association which met certain qualifications and was entered into after Oct. 14, 1965 and before Nov. 13, 1966, and which was in effect on Nov. 13, 1966, was to be treated for purposes of subsec. (h) of this section as if entered into after Nov. 13, 1966.

### Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

Part	
I.	Designation.
II.	Tax-exempt facility bonds for empowerment zones and enterprise communities.
III.	Additional incentives for empowerment zones.
IV.	Incentives for education zones.
V.	Regulations.

#### PRIOR PROVISIONS

A prior subchapter U consisted of sections 1391 to 1397, prior to repeal by Pub. L. 99-514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

#### AMENDMENTS

1997—Pub. L. 105-34, title II, § 226(b)(1), Aug. 5, 1997, 111 Stat. 824, added items for parts IV and V and struck out former item for part IV “Regulations”.

## PART I—DESIGNATION

Sec.	
1391.	Designation procedure.
1392.	Eligibility criteria.
1393.	Definitions and special rules.

### § 1391. Designation procedure

#### (a) In general

From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

#### (b) Number of designations

##### (1) Enterprise communities

The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

##### (2) Empowerment zones

The appropriate Secretaries may designate in the aggregate 11 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 8 may be designated in urban areas and not more than 3 may be designated in rural areas. If 6 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 1,000,000.

#### (c) Period designations may be made

A designation may be made under subsection (a) only after 1993 and before 1996.

#### (d) Period for which designation is in effect

##### (1) In general

Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

- (A)(i) in the case of an empowerment zone, December 31, 2011, or
- (ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,
- (B) the termination date designated by the State and local governments as provided for in their nomination, or
- (C) the date the appropriate Secretary revokes the designation.

##### (2) Revocation of designation

The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

- (A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

**(e) Limitations on designations**

No area may be designated under this section unless—

(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

(2) such State or States and the local governments have the authority—

(A) to nominate the area for designation under this section, and

(B) to provide the assurances described in paragraph (3),

(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

**(f) Application**

No area may be designated under this section unless the application for such designation—

(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nom-

inated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

(3) includes such other information as may be required by the appropriate Secretary.

**(g) Additional designations permitted**

**(1) In general**

In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

**(2) Period designations may be made and take effect**

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

**(3) Modifications to eligibility criteria, etc.**

**(A) Poverty rate requirement**

**(i) In general**

A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

**(ii) Treatment of census tracts with small populations**

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

**(iii) Exception for developable sites**

Clause (i) shall not apply to up to 3 non-contiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of

noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

**(iv) Certain provisions not to apply**

Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

**(v) Special rule for rural empowerment zone**

The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

**(B) Size limitation**

**(i) In general**

The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

**(ii) Special rule for rural areas**

If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

**(C) Aggregate population limitation**

The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1).

**(D) Previously designated enterprise communities may be included**

Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

**(E) Indian reservations may be nominated**

**(i) In general**

Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

**(ii) Special rule**

An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of<sup>1</sup> Interior).

**(h) Additional designations permitted**

**(1) In general**

In addition to the areas designated under subsections (a) and (g), the appropriate Sec-

retaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

**(2) Period designations may be made and take effect**

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002.

**(3) Modifications to eligibility criteria, etc.**

The rules of subsection (g)(3) shall apply to designations under this subsection.

**(4) Empowerment zones which become renewal communities**

The number of areas which may be designated as empowerment zones under this subsection shall be increased by 1 for each area which ceases to be an empowerment zone by reason of section 1400E(e). Each additional area designated by reason of the preceding sentence shall have the same urban or rural character as the area it is replacing.

(Added Pub. L. 103-66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 543; amended Pub. L. 105-34, title IX, §§ 951(a), 952(a), (d), Aug. 5, 1997, 111 Stat. 885-887; Pub. L. 106-554, § 1(a)(7) [title I, §§ 111, 112, title III, § 319(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A-600, 2763A-601, 2763A-646; Pub. L. 111-312, title VII, § 753(a), Dec. 17, 2010, 124 Stat. 3321.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

The date of the enactment of this subsection, referred to in subsec. (h)(2), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

PRIOR PROVISIONS

A prior section 1391, added Pub. L. 95-600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2892; amended Pub. L. 96-222, title I, § 106(a)(4), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96-595, § 3(a)(1), (2), Dec. 24, 1980, 94 Stat. 3465, defined terms used in former subchapter U, prior to repeal by Pub. L. 99-514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2010—Subsec. (d)(1)(A)(i). Pub. L. 111-312, § 753(a)(1), substituted “December 31, 2011” for “December 31, 2009”.

Subsec. (h)(2). Pub. L. 111-312, § 753(a)(2), struck out at end “Subject to subparagraphs (B) and (C) of subsection (d)(1), such designations shall remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009.”

2000—Subsec. (d)(1)(A). Pub. L. 106-554, § 1(a)(7) [title I, § 112], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the close of the 10th calendar year beginning on or after such date of designation.”

Subsec. (g)(3)(C). Pub. L. 106-554, § 1(a)(7) [title III, § 319(13)], substituted “paragraph (1)” for “paragraph (1)(B)”.

Subsec. (h). Pub. L. 106-554, § 1(a)(7) [title I, § 111], added subsec. (h).

1997—Subsec. (b)(2). Pub. L. 105-34, § 951(a)(3), substituted “1,000,000” for “750,000”.

<sup>1</sup> So in original. Probably should be followed by “the”.

Pub. L. 105-34, §951(a)(2), substituted “8” for “6” before “may be designated”.

Pub. L. 105-34, §951(a)(1), substituted “11” for “9”.

Subsec. (c). Pub. L. 105-34, §952(d)(2), substituted “subsection (a)” for “this section”.

Subsecs. (e), (f). Pub. L. 105-34, §952(d)(1), substituted “this section” for “subsection (a)” in introductory provisions.

Subsec. (g). Pub. L. 105-34, §952(a), added subsec. (g).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to periods after Dec. 31, 2009, see section 753(d) of Pub. L. 111-312, set out as a note under section 1202 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 951(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and section 1396 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997], except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act. No designation pursuant to such amendments shall take effect before January 1, 2000.”

#### TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS

Pub. L. 111-312, title VII, §753(c), Dec. 17, 2010, 124 Stat. 3321, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 17, 2010]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section [Dec. 17, 2010], the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

### § 1392. Eligibility criteria

#### (a) In general

A nominated area shall be eligible for designation under section 1391 only if it meets the following criteria:

##### (1) Population

The nominated area has a maximum population of—

- (A) in the case of an urban area, the lesser of—
  - (i) 200,000, or
  - (ii) the greater of 50,000 or 10 percent of the population of the most populous city located within the nominated area, and
- (B) in the case of a rural area, 30,000.

##### (2) Distress

The nominated area is one of pervasive poverty, unemployment, and general distress.

##### (3) Size

The nominated area—

- (A) does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area,
- (B) has a boundary which is continuous, or, except in the case of a rural area located in more than 1 State, consists of not more than 3 noncontiguous parcels,
- (C)(i) in the case of an urban area, is located entirely within no more than 2 contiguous States, and

- (ii) in the case of a rural area, is located entirely within no more than 3 contiguous States, and

(D) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an enterprise community).

#### (4) Poverty rate

The poverty rate—

- (A) for each population census tract within the nominated area is not less than 20 percent,
- (B) for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent, and
- (C) for at least 50 percent of the population census tracts within the nominated area is not less than 35 percent.

#### (b) Special rules relating to determination of poverty rate

For purposes of subsection (a)(4)—

##### (1) Treatment of census tracts with small populations

###### (A) Tracts with no population

In the case of a population census tract with no population—

- (i) such tract shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4), but
- (ii) such tract shall be treated as having a zero poverty rate for purposes of applying subparagraph (C) thereof.

###### (B) Tracts with populations of less than 2,000

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4) if more than 75 percent of such tract is zoned for commercial or industrial use.

##### (2) Discretion to adjust requirements for enterprise communities

In determining whether a nominated area is eligible for designation as an enterprise community, the appropriate Secretary may, where necessary to carry out the purposes of this subchapter, reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the population census tracts (or, if fewer, 5 population census tracts) in the nominated area:

- (A) The 20 percent threshold in subsection (a)(4)(A).
- (B) The 25 percent threshold in subsection (a)(4)(B).
- (C) The 35 percent threshold in subsection (a)(4)(C).

If the appropriate Secretary elects to reduce the threshold under subparagraph (C), such Secretary may (in lieu of applying the preceding sentence) reduce by 10 percentage points the threshold under subparagraph (C) for 3 population census tracts.

**(3) Each noncontiguous area must satisfy poverty rate rule**

A nominated area may not include a noncontiguous parcel unless such parcel separately meets (subject to paragraphs (1) and (2)) the criteria set forth in subsection (a)(4).

**(4) Areas not within census tracts**

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

**(c) Factors to consider**

From among the nominated areas eligible for designation under section 1391 by the appropriate Secretary, such appropriate Secretary shall make designations of empowerment zones and enterprise communities on the basis of—

(1) the effectiveness of the strategic plan submitted pursuant to section 1391(f)(2) and the assurances made pursuant to section 1391(e)(3), and

(2) criteria specified by the appropriate Secretary.

**(d) Special eligibility for nominated areas located in Alaska or Hawaii**

A nominated area in Alaska or Hawaii shall be treated as meeting the requirements of paragraphs (2), (3), and (4) of subsection (a) if for each census tract or block group within such area 20 percent or more of the families have income which is 50 percent or less of the statewide median family income (as determined under section 143).

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 545; amended Pub. L. 105-34, title IX, §954, Aug. 5, 1997, 111 Stat. 888.)

**PRIOR PROVISIONS**

A prior section 1392, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2893; amended Pub. L. 96-222, title I, §106(a)(5), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96-595, §3(a)(3), (4), Dec. 24, 1980, 94 Stat. 3465, related to election by general stock ownership corporations not to be subject to taxes imposed by this chapter, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

**AMENDMENTS**

1997—Subsec. (d). Pub. L. 105-34 added subsec. (d).

**§ 1393. Definitions and special rules**

**(a) In general**

For purposes of this subchapter—

**(1) Appropriate Secretary**

The term “appropriate Secretary” means—

(A) the Secretary of Housing and Urban Development in the case of any nominated area which is located in an urban area, and

(B) the Secretary of Agriculture in the case of any nominated area which is located in a rural area.

**(2) Rural area**

The term “rural area” means any area which is—

(A) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(B) determined by the Secretary of Agriculture, after consultation with the Secretary of Commerce, to be a rural area.

**(3) Urban area**

The term “urban area” means an area which is not a rural area.

**(4) Special rules for Indian reservations**

**(A) In general**

No empowerment zone or enterprise community may include any area within an Indian reservation.

**(B) Indian reservation defined**

The term “Indian reservation” has the meaning given such term by section 168(j)(6).

**(5) Local government**

The term “local government” means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

(B) any combination of political subdivisions described in subparagraph (A) recognized by the appropriate Secretary.

**(6) Nominated area**

The term “nominated area” means an area which is nominated by 1 or more local governments and the State or States in which it is located for designation under section 1391.

**(7) Governments**

If more than 1 State or local government seeks to nominate an area under this part, any reference to, or requirement of, this subchapter shall apply to all such governments.

**(8) Special rule**

An area shall be treated as nominated by a State and a local government if it is nominated by an economic development corporation chartered by the State.

**(9) Use of census data**

Population and poverty rate shall be determined by the most recent decennial census data available.

**(b) Empowerment zone; enterprise community**

For purposes of this title, the terms “empowerment zone” and “enterprise community” mean areas designated as such under section 1391.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 547.)

**PRIOR PROVISIONS**

A prior section 1393, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2894; amended Pub. L. 96-595, §3(a)(5), (6), (8), Dec. 24, 1980, 94 Stat. 3465, related to taxation of general stock ownership corporation taxable income to shareholders, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

**PART II—TAX-EXEMPT FACILITY BONDS FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES**

Sec.

1394. Tax-exempt enterprise zone facility bonds.

**§ 1394. Tax-exempt enterprise zone facility bonds**

**(a) In general**

For purposes of part IV of subchapter B of this chapter (relating to tax exemption requirements

for State and local bonds), the term “exempt facility bond” includes any bond issued as part of an issue 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide any enterprise zone facility.

**(b) Enterprise zone facility**

For purposes of this section—

**(1) In general**

The term “enterprise zone facility” means any qualified zone property the principal user of which is an enterprise zone business, and any land which is functionally related and subordinate to such property.

**(2) Qualified zone property**

The term “qualified zone property” has the meaning given such term by section 1397D; except that—

(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

(B) section 1397D(a)(2) shall be applied by substituting “an amount equal to 15 percent of the adjusted basis” for “an amount equal to the adjusted basis”.

**(3) Enterprise zone business**

**(A) In general**

Except as modified in this paragraph, the term “enterprise zone business” has the meaning given such term by section 1397C.

**(B) Modifications**

In applying section 1397C for purposes of this section—

**(i) Businesses in enterprise communities eligible**

References in section 1397C to empowerment zones shall be treated as including references to enterprise communities.

**(ii) Waiver of requirements during startup period**

A business shall not fail to be treated as an enterprise zone business during the startup period if—

(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397C as modified by this paragraph) at the end of such period, and

(II) such business makes bona fide efforts to be such a business.

**(iii) Reduced requirements after testing period**

A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397C if at least 35 percent of the employees of such business for such year are residents of an empowerment zone or an enterprise community. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397C(d).

**(C) Definitions relating to subparagraph (B)**

For purposes of subparagraph (B)—

**(i) Startup period**

The term “startup period” means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

(I) the date of issuance of the issue providing such property, or

(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

**(ii) Testing period**

The term “testing period” means the first 3 taxable years beginning after the startup period.

**(D) Portions of business may be enterprise zone business**

The term “enterprise zone business” includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated.

**(c) Limitation on amount of bonds**

**(1) In general**

Subsection (a) shall not apply to any issue if the aggregate amount of outstanding enterprise zone facility bonds allocable to any person (taking into account such issue) exceeds—

(A) \$3,000,000 with respect to any 1 empowerment zone or enterprise community, or

(B) \$20,000,000 with respect to all empowerment zones and enterprise communities.

**(2) Aggregate enterprise zone facility bond benefit**

For purposes of paragraph (1), the aggregate amount of outstanding enterprise zone facility bonds allocable to any person shall be determined under rules similar to the rules of section 144(a)(10), taking into account only bonds to which subsection (a) applies.

**(d) Acquisition of land and existing property permitted**

The requirements of sections 147(c)(1)(A) and 147(d) shall not apply to any bond described in subsection (a).

**(e) Penalty for ceasing to meet requirements**

**(1) Failures corrected**

An issue which fails to meet 1 or more of the requirements of subsections (a) and (b) shall be treated as meeting such requirements if—

(A) the issuer and any principal user in good faith attempted to meet such requirements, and

(B) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered.

**(2) Loss of deductions where facility ceases to be qualified**

No deduction shall be allowed under this chapter for interest on any financing provided from any bond to which subsection (a) applies with respect to any facility to the extent such

interest accrues during the period beginning on the first day of the calendar year which includes the date on which—

(A) substantially all of the facility with respect to which the financing was provided ceases to be used in an empowerment zone or enterprise community, or

(B) the principal user of such facility ceases to be an enterprise zone business (as defined in subsection (b)).

**(3) Exception if zone ceases**

Paragraphs (1) and (2) shall not apply solely by reason of the termination or revocation of a designation as an empowerment zone or an enterprise community.

**(4) Exception for bankruptcy**

Paragraphs (1) and (2) shall not apply to any cessation resulting from bankruptcy.

**(f) Bonds for empowerment zones designated under section 1391(g)**

**(1) In general**

In the case of a new empowerment zone facility bond—

(A) such bond shall not be treated as a private activity bond for purposes of section 146, and

(B) subsection (c) of this section shall not apply.

**(2) Limitation on amount of bonds**

**(A) In general**

Paragraph (1) shall apply to a new empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

**(B) Limitation on bonds designated**

The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

(i) \$60,000,000 if such zone is in a rural area,

(ii) \$130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and

(iii) \$230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

**(C) Special rules**

**(i) Coordination with limitation in subsection (c)**

Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

**(ii) Current refunding not taken into account**

In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

(I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

**(3) Empowerment zone facility bond**

For purposes of this subsection, the term “empowerment zone facility bond” means any bond which would be described in subsection (a) if—

(A) in the case of obligations issued before January 1, 2002, only empowerment zones designated under section 1391(g) were taken into account under sections 1397C and 1397D, and

(B) in the case of obligations issued after December 31, 2001, all empowerment zones (other than the District of Columbia Enterprise Zone) were taken into account under sections 1397C and 1397D.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 548; amended Pub. L. 104-188, title I, §1703(n)(7), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105-34, title IX, §§953(a), 955(a), (b), Aug. 5, 1997, 111 Stat. 887, 889, 890; Pub. L. 106-554, §1(a)(7) [title I, §§115(a), 116(b)(3), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A-601, 2763A-603; Pub. L. 107-147, title IV, §417(16), Mar. 9, 2002, 116 Stat. 56.)

**PRIOR PROVISIONS**

A prior section 1394, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96-595, §3(a)(6)-(8), Dec. 24, 1980, 94 Stat. 3465, related to rules applicable to distributions of an electing general stock ownership corporation, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

A prior section 1395, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895, related to adjustment to basis of stock of shareholders, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

**AMENDMENTS**

2002—Subsec. (c)(2). Pub. L. 107-147 substituted “paragraph (1)” for “subparagraph (A)”.

2000—Subsec. (b)(2). Pub. L. 106-554, §1(a)(7) [title I, §116(b)(3)(A)], substituted “section 1397D” for “section 1397C” in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 106-554, §1(a)(7) [title I, §116(b)(3)(B)], substituted “section 1397D(a)(2)” for “section 1397C(a)(2)”.

Subsec. (b)(3). Pub. L. 106-554, §1(a)(7) [title I, §116(b)(4)(A)], substituted “section 1397C” for “section 1397B” wherever appearing.

Subsec. (b)(3)(B)(iii). Pub. L. 106-554, §1(a)(7) [title I, §116(b)(4)(B)], substituted “section 1397C(d)” for “section 1397B(d)”.

Subsec. (f)(3). Pub. L. 106-554, §1(a)(7) [title I, §115(a)], amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “For purposes of this subsection, the term ‘new empowerment zone facility bond’ means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391(g) were taken into account under sections 1397B and 1397C.”

1997—Subsec. (b)(2). Pub. L. 105-34, §955(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The term ‘qualified zone property’ has the meaning given such term by section 1397C; except that the references to empowerment zones shall be treated as including references to enterprise communities.”

Subsec. (b)(3). Pub. L. 105-34, §955(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “The term ‘enterprise zone business’ has the meaning given to such term by section 1397B, except that—

“(A) references to empowerment zones shall be treated as including references to enterprise communities, and

“(B) such term includes any trades or businesses which would qualify as an enterprise zone business (determined after the modification of subparagraph (A)) if such trades or businesses were separately incorporated.”

Subsec. (f). Pub. L. 105-34, § 953(a), added subsec. (f).

1996—Subsec. (e)(2). Pub. L. 104-188, which directed that par. (2) be amended by striking “(i)” and inserting “(A)” and by striking “(ii)” and inserting “(B)”, could not be executed, because par. (2) contained neither “(i)” nor “(ii)”.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(7) [title I, § 115(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-602, provided that: “The amendments made by this section [amending this section] shall apply to obligations issued after December 31, 2001.”

Amendment by section 1(a)(7) [title I, § 116(b)(3), (4)] of Pub. L. 106-554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, § 116(c)] of Pub. L. 106-554, set out as a note under section 1016 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 953(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].”

Section 955(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§ 13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

### PART III—ADDITIONAL INCENTIVES FOR EMPOWERMENT ZONES

#### Subpart

- A. Empowerment zone employment credit.
- B. Additional expensing.
- C. Nonrecognition of gain on rollover of empowerment zone investments.
- D. General provisions.

#### AMENDMENTS

2000—Pub. L. 106-554, § 1(a)(7) [title I, § 116(b)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-604, added items for subparts C and D and struck out former item for subpart C “General provisions”.

#### SUBPART A—EMPOWERMENT ZONE EMPLOYMENT CREDIT

- Sec. 1396. Empowerment zone employment credit.
- 1397. Other definitions and special rules.

### § 1396. Empowerment zone employment credit

#### (a) Amount of credit

For purposes of section 38, the amount of the empowerment zone employment credit determined under this section with respect to any employer for any taxable year is the applicable percentage of the qualified zone wages paid or incurred during the calendar year which ends with or within such taxable year.

#### (b) Applicable percentage

For purposes of this section, the applicable percentage is 20 percent.

### (c) Qualified zone wages

#### (1) In general

For purposes of this section, the term “qualified zone wages” means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified zone employee.

#### (2) Only first \$15,000 of wages per year taken into account

With respect to each qualified zone employee, the amount of qualified zone wages which may be taken into account for a calendar year shall not exceed \$15,000.

### (3) Coordination with work opportunity credit

#### (A) In general

The term “qualified zone wages” shall not include wages taken into account in determining the credit under section 51.

#### (B) Coordination with paragraph (2)

The \$15,000 amount in paragraph (2) shall be reduced for any calendar year by the amount of wages paid or incurred during such year which are taken into account in determining the credit under section 51.

### (d) Qualified zone employee

For purposes of this section—

#### (1) In general

Except as otherwise provided in this subsection, the term “qualified zone employee” means, with respect to any period, any employee of an employer if—

(A) substantially all of the services performed during such period by such employee for such employer are performed within an empowerment zone in a trade or business of the employer, and

(B) the principal place of abode of such employee while performing such services is within such empowerment zone.

#### (2) Certain individuals not eligible

The term “qualified zone employee” shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

(C) any individual employed by the employer for less than 90 days,

(D) any individual employed by the employer at any facility described in section 144(c)(6)(B), and

(E) any individual employed by the employer in a trade or business the principal activity of which is farming (within the meaning of subparagraph (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the employer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the employer which are used in such a trade or business (as determined under regulations prescribed by the Secretary),

exceeds \$500,000.



### (3) Special rules related to termination of employment

#### (A) In general

Paragraph (2)(C) shall not apply to—

(i) a termination of employment of an individual who before the close of the period referred to in paragraph (2)(C) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(ii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

#### (B) Changes in form of business

For purposes of paragraph (2)(C), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 549; amended Pub. L. 104-188, title I, §1201(e)(4), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105-34, title IX, §§951(b), 952(b), Aug. 5, 1997, 111 Stat. 885, 887; Pub. L. 106-554, §1(a)(7) [title I, §113(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-601.)

#### REFERENCES IN TEXT

The Taxpayer Relief Act of 1997, referred to in subsec. (b)(2), is Pub. L. 105-34, Aug. 5, 1997, 111 Stat. 788.

#### PRIOR PROVISIONS

A prior section 1396, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96-595, §3(a)(6), (9), (10), Dec. 24, 1980, 94 Stat. 3465, related to minimum distributions by an electing general stock ownership corporation, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

#### AMENDMENTS

2000—Subsec. (b). Pub. L. 106-554, §1(a)(7) [title I, §113(a)], amended subsec. (b) generally, substituting provisions establishing an applicable percentage of 20 percent for provisions setting out tables for determining the applicable percentage.

Subsec. (e). Pub. L. 106-554, §1(a)(7) [title I, §113(b)], struck out heading and text of subsec. (e). Text read as follows: “This section shall be applied without regard to any empowerment zone designated under section 1391(g).”

1997—Subsec. (b). Pub. L. 105-34 substituted “For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘applicable percentage’ means the percentage determined in accordance with the following table:”

for “For purposes of this section, the term ‘applicable percentage’ means the percentage determined in accordance with the following table:” and added par. (2).

Subsec. (e). Pub. L. 105-34, §952(b), added subsec. (e). 1996—Subsec. (c)(3). Pub. L. 104-188 substituted “work opportunity credit” for “targeted jobs credit” in heading.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(7) [title I, §113(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-601, provided that: “The amendments made by this section [amending this section and section 1400 of this title] shall apply to wages paid or incurred after December 31, 2001.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 951(b) of Pub. L. 105-34 effective Aug. 5, 1997, except that designations of new empowerment zones made pursuant to amendments by section 951 of Pub. L. 105-34 to be made during 180-day period beginning Aug. 5, 1997, and no designation pursuant to such amendments to take effect before Jan. 1, 2000, see section 951(c) of Pub. L. 105-34, set out as a note under section 1391 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104-188, set out as a note under section 38 of this title.

### § 1397. Other definitions and special rules

#### (a) Wages

For purposes of this subpart—

##### (1) In general

The term “wages” has the same meaning as when used in section 51.

##### (2) Certain training and educational benefits

###### (A) In general

The following amounts shall be treated as wages paid to an employee:

(i) Any amount paid or incurred by an employer which is excludable from the gross income of an employee under section 127, but only to the extent paid or incurred to a person not related to the employer.

(ii) In the case of an employee who has not attained the age of 19, any amount paid or incurred by an employer for any youth training program operated by such employer in conjunction with local education officials.

###### (B) Related person

A person is related to any other person if the person bears a relationship to such other person specified in section 267(b) or 707(b)(1), or such person and such other person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), “10 percent” shall be substituted for “50 percent”.

#### (b) Controlled groups

For purposes of this subpart—

(1) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer for purposes of this subpart, and

(2) the credit (if any) determined under section 1396 with respect to each such employer shall be its proportionate share of the wages giving rise to such credit.

**(c) Certain other rules made applicable**

For purposes of this subpart, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 551.)

**PRIOR PROVISIONS**

A prior section 1397, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895, related to special rules applicable to an electing general stock ownership corporation, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

**SUBPART B—ADDITIONAL EXPENSING**

Sec.

1397A. Increase in expensing under section 179.

**§ 1397A. Increase in expensing under section 179****(a) General rule**

In the case of an enterprise zone business, for purposes of section 179—

(1) the limitation under section 179(b)(1) shall be increased by the lesser of—

(A) \$35,000, or

(B) the cost of section 179 property which is qualified zone property placed in service during the taxable year, and

(2) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified zone property shall be 50 percent of the cost thereof.

**(b) Recapture**

Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified zone property which ceases to be used in an empowerment zone by an enterprise zone business.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 552; amended Pub. L. 105-34, title IX, §952(c), Aug. 5, 1997, 111 Stat. 887; Pub. L. 106-554, §1(a)(7) [title I, §114(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-601.)

**AMENDMENTS**

2000—Subsec. (a)(1)(A). Pub. L. 106-554, §1(a)(7) [title I, §114(a)], substituted “\$35,000” for “\$20,000”.

Subsec. (c). Pub. L. 106-554, §1(a)(7) [title I, §114(b)], struck out heading and text of subsec. (c). Text read as follows: “For purposes of this section, qualified zone property shall not include any property substantially all of the use of which is in any parcel described in section 1391(g)(3)(A)(iii).”

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

**EFFECTIVE DATE OF 2000 AMENDMENT**

Pub. L. 106-554, §1(a)(7) [title I, §114(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-601, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.”

**SUBPART C—NONRECOGNITION OF GAIN ON ROLLOVER OF EMPOWERMENT ZONE INVESTMENTS**

Sec.

1397B. Nonrecognition of gain on rollover of empowerment zone investments.

**AMENDMENTS**

2000—Pub. L. 106-554, §1(a)(7) [title I, §116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-602, added subpart C head-

ing and item 1397B. Former subpart C, consisting of sections 1397B and 1397C, redesignated D.

**§ 1397B. Nonrecognition of gain on rollover of empowerment zone investments****(a) Nonrecognition of gain**

In the case of any sale of a qualified empowerment zone asset held by the taxpayer for more than 1 year and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified empowerment zone asset (with respect to the same zone as the asset sold) purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

**(b) Definitions and special rules**

For purposes of this section—

**(1) Qualified empowerment zone asset****(A) In general**

The term “qualified empowerment zone asset” means any property which would be a qualified community asset (as defined in section 1400F) if in section 1400F—

(i) references to empowerment zones were substituted for references to renewal communities,

(ii) references to enterprise zone businesses (as defined in section 1397C) were substituted for references to renewal community businesses, and

(iii) the date of the enactment of this paragraph were substituted for “December 31, 2001” each place it appears.

**(B) Treatment of DC zone**

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this section.

**(2) Certain gain not eligible for rollover**

This section shall not apply to—

(A) any gain which is treated as ordinary income for purposes of this subtitle, and

(B) any gain which is attributable to real property, or an intangible asset, which is not an integral part of an enterprise zone business.

**(3) Purchase**

A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

**(4) Basis adjustments**

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified empowerment zone asset which is purchased by the taxpayer during the 60-day period described in subsection (a). This paragraph shall not apply for purposes of section 1202.

**(5) Holding period**

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to any qualified empowerment zone asset which is sold—

(A) the taxpayer's holding period for such asset and the asset referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first year of the taxpayer's holding period for the asset referred to in subsection (a)(1) shall be taken into account for purposes of paragraphs (2)(A)(iii), (3)(C), and (4)(A)(iii) of section 1400F(b).

(Added Pub. L. 106-554, §1(a)(7) [title I, §116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-602.)

## REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(1)(A)(iii), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

## PRIOR PROVISIONS

A prior section 1397B was renumbered section 1397C of this title.

## EFFECTIVE DATE

Section applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106-554, set out as an Effective Date of 2000 Amendment note under section 1016 of this title.

## SUBPART D—GENERAL PROVISIONS

Sec.	
1397C.	Enterprise zone business defined.
1397D.	Qualified zone property defined.

## AMENDMENTS

2000—Pub. L. 106-554, §1(a)(7) [title I, §116(a)(1), (b)(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A-602, 2763A-604, redesignated subpart C of this part as this subpart and items for sections 1397B and 1397C as 1397C and 1397D, respectively.

**§ 1397C. Enterprise zone business defined****(a) In general**

For purposes of this part, the term “enterprise zone business” means—

- (1) any qualified business entity, and
- (2) any qualified proprietorship.

**(b) Qualified business entity**

For purposes of this section, the term “qualified business entity” means, with respect to any taxable year, any corporation or partnership if for such year—

(1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone,

(2) at least 50 percent of the total gross income of such entity is derived from the active conduct of such business,

(3) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone,

(4) a substantial portion of the intangible property of such entity is used in the active conduct of any such business,

(5) a substantial portion of the services performed for such entity by its employees are performed in an empowerment zone,

(6) at least 35 percent of its employees are residents of an empowerment zone,

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(8) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

**(c) Qualified proprietorship**

For purposes of this section, the term “qualified proprietorship” means, with respect to any taxable year, any qualified business carried on by an individual as a proprietorship if for such year—

(1) at least 50 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone,

(2) a substantial portion of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone,

(3) a substantial portion of the intangible property of such business is used in the active conduct of such business,

(4) a substantial portion of the services performed for such individual in such business by employees of such business are performed in an empowerment zone,

(5) at least 35 percent of such employees are residents of an empowerment zone,

(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.

For purposes of this subsection, the term “employee” includes the proprietor.

**(d) Qualified business**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this subsection, the term “qualified business” means any trade or business.

**(2) Rental of real property**

The rental to others of real property located in an empowerment zone shall be treated as a qualified business if and only if—

(A) the property is not residential rental property (as defined in section 168(e)(2)), and

(B) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses.

For purposes of subparagraph (B), the lessor of the property may rely on a lessee's certifi-

cation that such lessee is an enterprise zone business.

**(3) Rental of tangible personal property**

The rental to others of tangible personal property shall be treated as a qualified business if and only if at least 50 percent of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

**(4) Treatment of business holding intangibles**

The term “qualified business” shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

**(5) Certain businesses excluded**

The term “qualified business” shall not include—

(A) any trade or business consisting of the operation of any facility described in section 144(c)(6)(B), and

(B) any trade or business the principal activity of which is farming (within the meaning of subparagraphs<sup>1</sup> (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business,

exceeds \$500,000.

For purposes of subparagraph (B), rules similar to the rules of section 1397(b) shall apply.

**(e) Nonqualified financial property**

For purposes of this section, the term “nonqualified financial property” means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations; except that such term shall not include—

(1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or

(2) debt instruments described in section 1221(a)(4).

**(f) Treatment of businesses straddling census tract lines**

For purposes of this section, if—

(1) a business entity or proprietorship uses real property located within an empowerment zone,

(2) the business entity or proprietorship also uses real property located outside the empowerment zone,

(3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and

(4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),

then all the services performed by employees, all business activities, all tangible property, and

all intangible property of the business entity or proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an empowerment zone.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 552, §1397B; amended Pub. L. 104-188, title I, §1703(m), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105-34, title IX, §956(a), Aug. 5, 1997, 111 Stat. 890; Pub. L. 106-170, title V, §532(c)(4), Dec. 17, 1999, 113 Stat. 1931; renumbered §1397C, Pub. L. 106-554, §1(a)(7) [title I, §116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-602.)

PRIOR PROVISIONS

A prior section 1397C was renumbered section 1397D of this title.

AMENDMENTS

2000—Pub. L. 106-554 renumbered section 1397B of this title as this section.

1999—Subsec. (e)(2). Pub. L. 106-170 substituted “section 1221(a)(4)” for “section 1221(4)”.

1997—Subsec. (b)(2). Pub. L. 105-34, §956(a)(1), substituted “50 percent” for “80 percent”.

Subsec. (b)(3). Pub. L. 105-34, §956(a)(2), substituted “a substantial portion” for “substantially all”.

Subsec. (b)(4). Pub. L. 105-34, §956(a)(2), (3), substituted “a substantial portion” for “substantially all” and struck out “, and exclusively related to,” after “entity is used in”.

Subsec. (b)(5). Pub. L. 105-34, §956(a)(2), substituted “a substantial portion” for “substantially all”.

Subsec. (c)(1). Pub. L. 105-34, §956(a)(1), substituted “50 percent” for “80 percent”.

Subsec. (c)(2). Pub. L. 105-34, §956(a)(2), substituted “a substantial portion” for “substantially all”.

Subsec. (c)(3). Pub. L. 105-34, §956(a)(2), (3), substituted “a substantial portion” for “substantially all” and struck out “, and exclusively related to,” after “business is used in”.

Subsec. (c)(4). Pub. L. 105-34, §956(a)(2), substituted “a substantial portion” for “substantially all”.

Subsec. (d)(2). Pub. L. 105-34, §956(a)(4), inserted concluding provisions.

Subsec. (d)(3). Pub. L. 105-34, §956(a)(5), substituted “at least 50 percent” for “substantially all”.

Subsec. (f). Pub. L. 105-34, §956(a)(6), added subsec. (f).

1996—Subsec. (d)(5)(B). Pub. L. 104-188 struck out “preceding” before “taxable year” in introductory provisions.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 956(b) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [Aug. 5, 1997].

“(2) SPECIAL RULE FOR ENTERPRISE ZONE FACILITY BONDS.—For purposes of section 1394(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

<sup>1</sup> So in original. Probably should be “subparagraph”.

**§ 1397D. Qualified zone property defined****(a) General rule**

For purposes of this part—

**(1) In general**

The term “qualified zone property” means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the empowerment zone took effect,

(B) the original use of which in an empowerment zone commences with the taxpayer, and

(C) substantially all of the use of which is in an empowerment zone and is in the active conduct of a qualified business by the taxpayer in such zone.

**(2) Special rule for substantial renovations**

In the case of any property which is substantially renovated by the taxpayer, the requirements of subparagraphs (A) and (B) of paragraph (1) shall be treated as satisfied. For purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer if, during any 24-month period beginning after the date on which the designation of the empowerment zone took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) \$5,000.

**(b) Special rules for sale-leasebacks**

For purposes of subsection (a)(1)(B), if property is sold and leased back by the taxpayer within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback.

(Added Pub. L. 103-66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 554, § 1397C; renumbered § 1397D, Pub. L. 106-554, § 1(a)(7) [title I, § 116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-602.)

**PRIOR PROVISIONS**

A prior section 1397D was renumbered section 1397F of this title.

**AMENDMENTS**

2000—Pub. L. 106-554 renumbered section 1397C of this title as this section.

**PART IV—INCENTIVES FOR EDUCATION ZONES**

Sec.

1397E. Credit to holders of qualified zone academy bonds.

**AMENDMENTS**

1997—Pub. L. 105-34, title II, § 226(a), Aug. 5, 1997, 111 Stat. 820, added part IV heading and item 1397E. Former part IV, consisting of section 1397D, redesignated V.

**§ 1397E. Credit to holders of qualified zone academy bonds****(a) Allowance of credit**

In the case of an eligible taxpayer who holds a qualified zone academy bond on the credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year the amount determined under subsection (b).

**(b) Amount of credit****(1) In general**

The amount of the credit determined under this subsection with respect to any qualified zone academy bond is the amount equal to the product of—

(A) the credit rate determined by the Secretary under paragraph (2) for the month in which such bond was issued, multiplied by

(B) the face amount of the bond held by the taxpayer on the credit allowance date.

**(2) Determination**

During each calendar month, the Secretary shall determine a credit rate which shall apply to bonds issued during the following calendar month. The credit rate for any month is the percentage which the Secretary estimates will permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuer.

**(c) Limitation based on amount of tax**

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits, and subparts H, I, and J thereof).

**(d) Qualified zone academy bond**

For purposes of this section—

**(1) In general**

The term “qualified zone academy bond” means any bond issued as part of an issue if—

(A) 95 percent or more of the proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(B) the bond is issued by a State or local government within the jurisdiction of which such academy is located,

(C) the issuer—

(i) designates such bond for purposes of this section,

(ii) certifies that it has written assurances that the private business contribution requirement of paragraph (2) will be met with respect to such academy, and

(iii) certifies that it has the written approval of the eligible local education agency for such bond issuance,

(D) the term of each bond which is part of such issue does not exceed the maximum term permitted under paragraph (3), and

(E) the issue meets the requirements of subsections (f), (g), and (h).

**(2) Private business contribution requirement**

**(A) In general**

For purposes of paragraph (1), the private business contribution requirement of this paragraph is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

**(B) Qualified contributions**

For purposes of subparagraph (A), the term “qualified contribution” means any contribution (of a type and quality acceptable to the eligible local education agency) of—

- (i) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),
- (ii) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,
- (iii) services of employees as volunteer mentors,
- (iv) internships, field trips, or other educational opportunities outside the academy for students, or
- (v) any other property or service specified by the eligible local education agency.

**(3) Term requirement**

During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of the bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

**(4) Qualified zone academy**

**(A) In general**

The term “qualified zone academy” means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

- (i) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,
- (ii) students in such public school or program (as the case may be) will be subject

to the same academic standards and assessments as other students educated by the eligible local education agency,

(iii) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(iv)(I) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(II) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act.

**(B) Eligible local education agency**

The term “eligible local education agency” means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

**(5) Qualified purpose**

The term “qualified purpose” means, with respect to any qualified zone academy—

- (A) rehabilitating or repairing the public school facility in which the academy is established,
- (B) providing equipment for use at such academy,
- (C) developing course materials for education to be provided at such academy, and
- (D) training teachers and other school personnel in such academy.

**(6) Eligible taxpayer**

The term “eligible taxpayer” means—

- (A) a bank (within the meaning of section 581),
- (B) an insurance company to which subchapter L applies, and
- (C) a corporation actively engaged in the business of lending money.

**(e) Limitation on amount of bonds designated**

**(1) National limitation**

There is a national zone academy bond limitation for each calendar year. Such limitation is \$400,000,000 for 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007, and, except as provided in paragraph (4), zero thereafter.

**(2) Allocation of limitation**

The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

**(3) Designation subject to limitation amount**

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d)(1) with

respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

**(4) Carryover of unused limitation**

If for any calendar year—

(A) the limitation amount for any State, exceeds

(B) the amount of bonds issued during such year which are designated under subsection (d)(1) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess. Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

**(f) Special rules relating to expenditures**

**(1) In general**

An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the issuer reasonably expects—

(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the date of issuance of the qualified zone academy bond,

(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the qualified zone academy bond, and

(C) such purposes will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

**(2) Extension of period**

Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related purposes will continue to proceed with due diligence.

**(3) Failure to spend required amount of bond proceeds within 5 years**

To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

**(g) Special rules relating to arbitrage**

An issue shall be treated as meeting the requirements of this subsection if the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

**(h) Reporting**

Issuers of qualified academy zone bonds shall submit reports similar to the reports required under section 149(e).

**(i) Other definitions**

For purposes of this section—

**(1) Credit allowance date**

The term “credit allowance date” means, with respect to any issue, the last day of the 1-year period beginning on the date of issuance of such issue and the last day of each successive 1-year period thereafter.

**(2) Bond**

The term “bond” includes any obligation.

**(3) State**

The term “State” includes the District of Columbia and any possession of the United States.

**(j) Credit included in gross income**

Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)).

**(k) Credit treated as nonrefundable bondholder credit**

For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart H of part IV of subchapter A of this chapter.

**(l) S corporations**

In the case of a qualified zone academy bond held by an S corporation which is an eligible taxpayer—

(1) each shareholder shall take into account such shareholder’s pro rata share of the credit, and

(2) no basis adjustments to the stock of the corporation shall be made under section 1367 on account of this section.

**(m) Termination**

This section shall not apply to any obligation issued after the date of the enactment of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008.

(Added Pub. L. 105-34, title II, § 226(a), Aug. 5, 1997, 111 Stat. 821; amended Pub. L. 105-206, title VI, § 6004(g)(2)-(4), July 22, 1998, 112 Stat. 796; Pub. L. 106-78, title VII, § 752(b)(11), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 106-170, title V, § 509, Dec. 17, 1999, 113 Stat. 1924; Pub. L. 107-110, title X, § 1076(t), Jan. 8, 2002, 115 Stat. 2092; Pub. L. 107-147, title VI, § 608(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108-311, title III, § 304(a), title IV, § 406(c), Oct. 4, 2004, 118 Stat. 1179, 1189; Pub. L. 109-58, title XIII, § 1303(c)(2), (3), Aug. 8, 2005, 119 Stat. 997; Pub. L. 109-432, div. A, title I, § 107(a), (b)(1), Dec. 20, 2006, 120 Stat. 2938; Pub. L. 110-234, title XV, § 15316(c)(2), May 22, 2008, 122 Stat. 1511; Pub. L. 110-246, § 4(a), title XV, § 15316(c)(2), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110-343, div. C, title III, § 313(b)(3), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111-5, div. B, title I, § 1531(c)(3), Feb. 17, 2009, 123 Stat. 360.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(4)(A)(iv)(I), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

The Richard B. Russell National School Lunch Act, referred to in subsec. (d)(4)(A)(iv)(II), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

Section 9101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(4)(B), is classified to section 7801 of Title 20, Education.

The date of the enactment of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, referred to in subsec. (m), is the date of enactment of div. C of Pub. L. 110-343, which was approved Oct. 3, 2008.

#### CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

#### AMENDMENTS

2009—Subsec. (c)(2). Pub. L. 111-5 substituted “, I, and J” for “and I”.

2008—Subsec. (c)(2). Pub. L. 110-246, §15316(c)(2), substituted “subparts H and I” for “subpart H”.

Subsec. (m). Pub. L. 110-343 added subsec. (m).

2006—Subsec. (d)(1)(E). Pub. L. 109-432, §107(b)(1)(A), added subpar. (E).

Subsec. (e)(1). Pub. L. 109-432, §107(a), substituted “2005, 2006, and 2007” for “and 2005”.

Subsecs. (f) to (l). Pub. L. 109-432, §107(b)(1)(B), added subsecs. (f) to (h) and redesignated former subsecs. (f) to (i) as (i) to (l), respectively.

2005—Subsec. (c)(2). Pub. L. 109-58, §1303(c)(2), inserted “, and subpart H thereof” after “refundable credits”.

Subsec. (h). Pub. L. 109-58, §1303(c)(3), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: “For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter.”

2004—Subsec. (e)(1). Pub. L. 108-311, §304(a), substituted “2003, 2004, and 2005” for “and 2003”.

Subsec. (i). Pub. L. 108-311, §406(c), added subsec. (i).

2002—Subsec. (d)(4)(B). Pub. L. 107-110 substituted “9101” for “14101”.

Subsec. (e)(1). Pub. L. 107-147 substituted “2000, 2001, 2002, and 2003” for “2000, and 2001”.

1999—Subsec. (d)(4)(A)(iv)(II). Pub. L. 106-78 substituted “Richard B. Russell National School Lunch Act” for “National School Lunch Act”.

Subsec. (e)(1). Pub. L. 106-170, §509(a), substituted “, 1999, 2000, and 2001” for “and 1999”.

Subsec. (e)(4). Pub. L. 106-170, §509(b), inserted at end “Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.”

1998—Subsec. (d)(4)(B). Pub. L. 105-206, §6004(g)(2), substituted “local educational agency as defined” for “local education agency as defined”.

Subsec. (g). Pub. L. 105-206, §6004(g)(4), inserted “(determined without regard to subsection (c))” after “section”.

Subsec. (h). Pub. L. 105-206, §6004(g)(3), added subsec. (h).

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111-5, set out as a note under section 54 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-343 applicable to obligations issued after Oct. 3, 2008, see section 313(c) of Pub.

L. 110-343, set out as a note under section 54A of this title.

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15316(c)(2) of Pub. L. 110-246 applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110-246, set out as a note under section 54 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title I, §107(c), Dec. 20, 2006, 120 Stat. 2939, provided that:

“(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 2005.

“(2) SPECIAL RULES.—The amendments made by subsection (b) [amending this section and sections 54 and 1400N of this title] shall apply to obligations issued after the date of the enactment of this Act [Dec. 20, 2006] pursuant to allocations of the national zone academy bond limitation for calendar years after 2005.”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-58 applicable to taxable years beginning after Dec. 31, 2005, see section 1303(e) of Pub. L. 109-58, as amended, set out as an Effective Date note under section 54 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-311, title III, §304(b), Oct. 4, 2004, 118 Stat. 1179, provided that: “The amendment made by this section [amending this section] shall apply to obligations issued after December 31, 2003.”

Amendment by section 406(c) of Pub. L. 108-311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 406(h) of Pub. L. 108-311, set out as a note under section 55 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107-147, title VI, §608(b), Mar. 9, 2002, 116 Stat. 60, provided that: “The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Mar. 9, 2002].”

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section 226(c) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting this section and renumbering section 1397D as section 1397F of this title] shall apply to obligations issued after December 31, 1997.”

### PART V—REGULATIONS

Sec.

1397F. Regulations.

#### AMENDMENTS

1997—Pub. L. 105-34, title II, §226(a), (b)(2), Aug. 5, 1997, 111 Stat. 820, 824, redesignated part IV of this subchapter as this part and item 1397D as 1397F.



**§ 1397F. Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of parts II and III, including—

- (1) regulations limiting the benefit of parts II and III in circumstances where such benefits, in combination with benefits provided under other Federal programs, would result in an activity being 100 percent or more subsidized by the Federal Government,
- (2) regulations preventing abuse of the provisions of parts II and III, and
- (3) regulations dealing with inadvertent failures of entities to be enterprise zone businesses.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 555, §1397D; renumbered §1397F, Pub. L. 105-34, title II, §226(a), Aug. 5, 1997, 111 Stat. 820; amended Pub. L. 105-206, title VI, §6004(g)(1), July 22, 1998, 112 Stat. 796.)

**AMENDMENTS**

1998—Pub. L. 105-206 amended directory language of Pub. L. 105-34, §226(a). See 1997 Amendment note below.  
 1997—Pub. L. 105-34, §226(a), as amended by Pub. L. 105-206, renumbered section 1397D of this title as this section.

**Subchapter V—Title 11 Cases**

Sec.	
1398.	Rules relating to individuals' title 11 cases.
1399.	No separate taxable entities for partnerships, corporations, etc.

**AMENDMENTS**

1980—Pub. L. 96-589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397, added subchapter V heading "Title 11 Cases" and items 1398 and 1399.

**§ 1398. Rules relating to individuals' title 11 cases****(a) Cases to which section applies**

Except as provided in subsection (b), this section shall apply to any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code in which the debtor is an individual.

**(b) Exceptions where case is dismissed, etc.****(1) Section does not apply where case is dismissed**

This section shall not apply if the case under chapter 7 or 11 of title 11 of the United States Code is dismissed.

**(2) Section does not apply at partnership level**

For purposes of subsection (a), a partnership shall not be treated as an individual, but the interest in a partnership of a debtor who is an individual shall be taken into account under this section in the same manner as any other interest of the debtor.

**(c) Computation and payment of tax; basic standard deduction****(1) Computation and payment of tax**

Except as otherwise provided in this section, the taxable income of the estate shall be computed in the same manner as for an individual. The tax shall be computed on such taxable income and shall be paid by the trustee.

**(2) Tax rates**

The tax on the taxable income of the estate shall be determined under subsection (d) of section 1.

**(3) Basic standard deduction**

In the case of an estate which does not itemize deductions, the basic standard deduction for the estate for the taxable year shall be the same as for a married individual filing a separate return for such year.

**(d) Taxable year of debtors****(1) General rule**

Except as provided in paragraph (2), the taxable year of the debtor shall be determined without regard to the case under title 11 of the United States Code to which this section applies.

**(2) Election to terminate debtor's year when case commences****(A) In general**

Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2 taxable years—

- (i) the first of which ends on the day before the commencement date, and
- (ii) the second of which begins on the commencement date.

**(B) Spouse may join in election**

In the case of a married individual (within the meaning of section 7703), the spouse may elect to have the debtor's election under subparagraph (A) also apply to the spouse, but only if the debtor and the spouse file a joint return for the taxable year referred to in subparagraph (A)(i).

**(C) No election where debtor has no assets**

No election may be made under subparagraph (A) by a debtor who has no assets other than property which the debtor may treat as exempt property under section 522 of title 11 of the United States Code.

**(D) Time for making election**

An election under subparagraph (A) or (B) may be made only on or before the due date for filing the return for the taxable year referred to in subparagraph (A)(i). Any such election, once made, shall be irrevocable.

**(E) Returns**

A return shall be made for each of the taxable years specified in subparagraph (A).

**(F) Annualization**

For purposes of subsections (b), (c), and (d) of section 443, a return filed for either of the taxable years referred to in subparagraph (A) shall be treated as a return made under paragraph (1) of subsection (a) of section 443.

**(3) Commencement date defined**

For purposes of this subsection, the term "commencement date" means the day on which the case under title 11 of the United States Code to which this section applies commences.